

Mary Beth Kaufman (CA SBN # 228570)  
Law Offices of Stanton & Kaufman  
400 Montgomery Street, Suite 502  
San Francisco, California 94104  
Telephone: (415) 392-6161, extension 305  
Fax: (415) 983-2987  
Email: mbkaufman@immlawsf.com

Counsel for Plaintiff  
Juan Cuellar Huerta

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JUAN MANUEL CUELLAR HUERTA,

Plaintiff,  
v.

TERRI A. ROBINSON, DIRECTOR, NATIONAL  
BENEFITS CENTER OF THE UNITED STATES  
CITIZENSHIP AND IMMIGRATION SERVICES  
("USCIS"); TRACY RENAUD, ACTING DIRECTOR,  
USCIS; USCIS; ALEJANDRO MAYORKAS,  
SECRETARY OF UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY; UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY, in their  
official capacities,

Defendants.

Case No.

**COMPLAINT UNDER  
ADMINISTRATIVE  
PROCEDURE ACT**

Immigration Case

**INTRODUCTION**

1. Plaintiff, Juan Manuel Cuellar Huerta, ("Mr. Cuellar" or "Plaintiff"), seeks  
declaratory relief and an order compelling Defendants to rescind the denial of Mr.

1 Cuellar's application for advance parole.

2 2. Mr. Cuellar is the noncitizen father of an adult citizen of the United States.  
3 Based on that familial relationship, on April 30, 2020, Mr. Cuellar filed a Form I-485,  
4 Application to Adjust Status to Lawful Permanent Residence, together with Form I-765,  
5 Application for Employment Authorization, and Form I-131, Application for Travel  
6 Document, with the United States Citizenship and Immigration Services ("USCIS"). The  
7 "Travel Document" that Mr. Cuellar seeks is known as "advance parole" and would  
8 permit him to reenter the United States after a brief departure. *See* 8 C.F.R. § 212.5(c),  
9 (f).  
10

11 3. The governing statute and regulations authorize USCIS to grant advance  
12 parole to a noncitizen with a pending application for adjustment of status (Form I-485).  
13 *See, e.g.,* 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5(c).  
14

15 4. On September 16, 2020, USCIS denied Mr. Cuellar's Form I-131, despite the  
16 fact that his Form I-485 remains pending.

17 5. USCIS's denial of Mr. Cuellar's Form I-131 is a violation of the  
18 Administrative Procedure Act, as the decision is arbitrary, capricious, and contrary to  
19 law.  
20

### 21 **JURISDICTION AND VENUE**

22 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C.  
23 § 1346(b) (federal defendant), 5 U.S.C. § 704 (Administrative Procedure Act), and 28 U.S.C. §§  
24 2201, 2202 (declaratory judgment).

25 7. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e) because  
26 this is a civil action in which Defendants are employees or officers of the United States,  
27 acting in their official capacities; because Plaintiff resides in this district; and because no  
28

---

1 real property is involved in this action.

2 //

3 **PARTIES**

4 8. Plaintiff Mr. Cuellar is a citizen and national of Mexico who resides in  
5 Hercules, California.

6  
7 9. Defendant Terri Robinson is the director of the USCIS National Benefits  
8 Center and, in that capacity, issued the denial of Mr. Cuellar's Form I-131. She is sued  
9 herein in her official capacity.

10 10. Tracy Renaud is the acting director of USCIS. She is sued herein in her  
11 official capacity.

12 11. The USCIS is the agency responsible for administration and enforcement  
13 of the Immigration and Nationality Act and other laws relating to the immigration and  
14 naturalization of noncitizens. USCIS is responsible for adjudication of applications for  
15 travel documents, including advance parole documents.

16  
17 12. Defendant Alejandro Mayorkas is the Secretary of the Department of  
18 Homeland Security, the executive department that contains USCIS. In this capacity, he  
19 has responsibility for the administration and enforcement of the immigration laws  
20 pursuant to 8 U.S.C. § 1103. He is sued herein in his official capacity

21  
22 13. The Department of Homeland Security is the federal agency  
23 encompassing USCIS, which is responsible for the administration and enforcement of the  
24 Immigration and Nationality Act and other laws relating to the immigration and  
25 naturalization of noncitizens.

26 **FACTUAL ALLEGATIONS**

27 14. A noncitizen who is the parent of an adult U.S. citizen may apply to adjust  
28

---

1 his status to that of a lawful permanent resident. 8 U.S.C. § 1151(b)(2)(A)(i); 8 U.S.C. §  
2 1255.

3 15. To apply for lawful permanent residence from within the United States,  
4 rather than at a consulate abroad, the noncitizen must have been “inspected and admitted  
5 or paroled into the United States” at some time in the past. 8 U.S.C. § 1255(a). The  
6 terms “admission” and “admitted” refer to “the lawful entry of the [noncitizen] into the  
7 United States after inspection and authorization by an immigration officer.” 8 U.S.C. §  
8 1101(a)(13)(A). It does not matter whether the noncitizen’s admission was substantively  
9 compliant with the law; it matters only that the entry was procedurally regular. *Matter of*  
10 *Quilantan*, 25 I. & N. Dec. 285, 290 (BIA 2010) (holding that “admitted” and  
11 “admission,” as defined in 8 U.S.C. § 1101(a)(13)(A), “denote procedural regularity for  
12 purposes of adjustment of status, rather than compliance with substantive legal  
13 requirements”). A noncitizen with no legal right to enter the United States “who  
14 physically presents herself for questioning and makes no knowing false claim to  
15 citizenship” is “inspected and admitted,” even if not admissible. *Id.* at 293 (citing *Matter*  
16 *of Areguillin*, 17 I. & N. Dec. 308 (BIA 1980); *Matter of G-*, 3 I. & N. Dec. 136, 138  
17 (BIA 1948)). There is no “requirement of substantive legal compliance [at entry] for  
18 adjustment of status under” 8 U.S.C. § 1255 (a). *Id.* at 291.

19 16. With his April 30, 2020 applications for adjustment of status, employment  
20 authorization, and advance parole, Mr. Cuellar included evidence of his procedurally  
21 regular admission into the United States. Along with statements from witnesses, Mr.  
22 Cuellar submitted his own detailed, sworn statement. His statement explains that, on July  
23 23, 1998, Mr. Cuellar presented himself at the Calexico, California port of entry with a  
24 falsified “Border Crossing Card,” which is a form of visitor visa under 8 U.S.C. §  
25  
26  
27  
28

---

1 1101(a)(15)(B). The border official who inspected Mr. Cuellar’s document asked him no  
2 questions and, “with a signal of his hand,” gestured to Mr. Cuellar that he could pass  
3 through the port of entry. Such an entry is considered “procedurally regular” and  
4 sufficient to qualify a noncitizen to apply for adjustment of status within the United  
5 States. *E.g., Quilantan*, 25 I. & N. Dec. at 290, 293.

6  
7 17. On April 30, 2020, USCIS accepted Mr. Cuellar’s applications for  
8 adjustment of status (Form I-485), employment authorization (Form I-765), an advance  
9 parole travel document (Form I-131), as well as other required forms and evidence. The  
10 Form I-485 remains pending at this time.

11 18. On November 10, 2020, USCIS approved Mr. Cuellar’s application for  
12 employment authorization (Form I-765), granting him an employment authorization  
13 document under 8 C.F.R. § 274a.12(c)(9). That regulation permits USCIS to grant  
14 employment authorization to a noncitizen on the sole basis that the noncitizen has a  
15 pending Form I-485.

16  
17 19. Similarly, the advance parole statute requires only (1) that Mr. Cuellar  
18 have a pending adjustment of status application, (2) that approval of advance parole  
19 would work a “significant public benefit,” and (3) that Mr. Cuellar merits a positive  
20 exercise of discretion. 8 U.S.C. § 212(d)(5). The advance parole regulation at 8 C.F.R.  
21 § 212.5(c) imposes no additional requirements. The Form I-131 instructions, which are  
22 incorporated into the regulations,<sup>1</sup> require only a copy of a photo identification document,  
23 an explanation of why the applicant wants to travel abroad, and a receipt notice showing  
24 that the applicant’s Form I-485 is pending. *See* Instructions, Form I-131, at 9, *available*  
25

26  
27  
28 <sup>1</sup> 8 C.F.R. § 103.2(a)(1) (“The form’s instructions are hereby incorporated into the regulations requiring its submission.”).

1 at <https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf>.

2       20. On September 16, 2020, USCIS denied Mr. Cuellar's application for advance  
3 parole (Form I-131) on the basis that Mr. Cuellar had "not established that [he was]  
4 admitted or paroled when [he] last entered the United States." The USCIS's denial notice  
5 cites no legal authority requiring an advance parole applicant to establish the merits of his  
6 underlying adjustment of status application.  
7

8                                   **CAUSE OF ACTION**

9                                   **COUNT ONE**

10                           **ADMINISTRATIVE PROCEDURE ACT**

11       21. Plaintiff incorporates the allegations in the paragraphs above as though fully set  
12 forth here.

13       22. Pursuant to 5 U.S.C. § 706(2)(A), a reviewing court shall "hold unlawful and set  
14 aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of  
15 discretion, or otherwise not in accordance with law . . . ."  
16

17       23. It was arbitrary, capricious, and contrary to law for the USCIS to conflate the  
18 requirements for advance parole with the requirements for adjustment of status. The USCIS  
19 denied advance parole on the basis of a requirement that does not apply to that benefit; the statute  
20 and regulations that govern advance parole determinations do not require Mr. Cuellar to prove  
21 that he has previously been inspected and admitted or paroled into the United States. Instead,  
22 they require that he have a Form I-485 pending, that his parole would work a significant public  
23 benefit, and that he merit a favorable exercise of discretion. 8 U.S.C. § 1182(d)(5); 8 C.F.R. §  
24 212.5(c). Mr. Cuellar has a pending Form I-485, and the USCIS made no finding as to the other  
25 two requirements. By denying on a basis other than those authorized by the statute and  
26  
27  
28

---

## **PRAYER FOR RELIEF**

- (1) Assume jurisdiction over this matter;
- (2) Order Defendants to rescind the denial of Plaintiff's application for advance parole and properly adjudicate that application within 30 days of the Court's order;
- (3) Declare Defendants' September 16, 2020 decision to deny advance parole to be a violation of 8 U.S.C. § 1182(d)(5), 8 C.F.R. § 212.5(c), and the Administrative Procedure Act;
- (4) Award reasonable costs and attorney's fees as provided in the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- (5) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Mary Beth Kaufman

Mary Beth Kaufman (CA SBN # 228570)

Law Offices of Stanton & Kaufman

400 Montgomery Street, Suite 502

San Francisco, California 94104

Telephone: (415) 392-6161, extension 305

Email: mbkaufman@immlawsf.com